

hand, firearms, weapons, drugs, monies, and other exhibits declared sensitive shall be destroyed or otherwise disposed of by order of the Court." . . .

DONE at Albuquerque this 27th day of March, 1985.

FOR THE COURT:  
s/ Howard Bratton, Chief Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

IN THE MATTER OF:  
RULES OF COURT

MISC. NO. 1426  
AMENDMENT TO LOCAL RULE 9

### ORDER

THIS MATTER having come before the Court on its own Motion, and the Court being informed of the premises, now therefore,

IT IS ORDERED that Local Rule 9, MOTIONS, be, and the same is, amended to read as follows:

. . . "j. (2) Statement of Material Facts. The moving party shall file with the motion a written memorandum containing a short, concise statement of the reasons in support of the motion with a list of authorities relied upon. A party opposing the motion shall, within 10 days after service of the motion, file a written memorandum containing a short, concise statement of the reasons in opposition to the motion with authorities. The moving party may, within ten days after the service of such memorandum, file a written reply memorandum." . .

DONE at Albuquerque, New Mexico, this 8th day of April, 1985.

FOR THE COURT:  
s/ Howard Bratton, Chief Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF THE STATE OF  
NEW MEXICO

In the Matter of  
WYCLIFFE V. BUTLER, ESQ.  
An Attorney Admitted to Practice Before the  
Courts of the State of New Mexico

Disciplinary No. 09-84-52

IN THE MATTER OF:  
RULES OF COURT

MJSC. NO. 14'6  
AMENDMENT TO LOCAL RULE 3

### ORDER

THIS MATTER having come before the Court on its own Motion, and the Court being informed of the premises, now therefore,

IT IS ORDERED that Local Rule 3, ATTORNEYS, be, and the same is, amended to read as follows:

. . . "b. Eligibility for Membership. Any attorney, who is a member in good standing of the bar of the Supreme Court of New Mexico, may apply to practice before this Court upon completion of the designated written application form, payment of the admission fee to the Clerk of the Court, and the taking of the prescribed oath. The admission fee shall be \$20.00.

. . . d. Non-Resident Attorneys. All attorneys residing outside the District who are members in good standing of the bar of any other state, may participate in a particular case before this Court. They shall associate with them in the action a resident member of the bar of this Court, on whom notice may be served, who shall sign the first motion or pleading and continue in the case unless other resident counsel be substituted.

Attorneys residing outside the District who are members in good standing of the bar of the Supreme Court of New Mexico, may apply to practice before this Court in accordance with Rule 3b above; provided however, that in any case in which the Court deems it necessary for the purposes of appearance, or ready availability, or otherwise in the interest of expediting disposition of the case, the Court may require out of District counsel to associate with a resident member of the bar of this Court." . . .

DONE at Albuquerque, New Mexico, this 23rd day of April, 1985.

FOR THE COURT:  
s/ Howard Bratton, Chief Judge

### \* FORMAL REPRIMAND

After a full hearing held pursuant to Rule 14 of the Disciplinary Board Rules of Procedure and oral argument held before a panel of this Board, it has been determined that while seeking an ex parte restraining order for a client you have committed violations of Disciplinary Rules 1-102 (A)(6), 7-102 (A) (3) and 7-106 (C) (7). The Hearing Committee's findings are summarized as follows.

In April 1984 your client was injured during the course of a quarrel with her boyfriend and hired you to pursue a damage claim and to seek a temporary restraining order (TRO). You immediately wrote a letter to the boyfriend demanding payment of money damages and his consent to the entry of a TRO against himself. The boyfriend retained an attorney, who wrote to you advising you of his representation of the defendant and further advising that the defendant would not communicate with your client.

For the next three months, you negotiated with the defendant's attorney concerning the issue of damages and your request for a restraining order. The defendant and his attorney objected to the entry of such an order on grounds that it might suggest the defendant was a violent individual and thus impair his ability to obtain employment in his area of study and also that it was unnecessary in view of the defendant's continued voluntary compliance with your client's request that he not contact her. At one point, the defendant's attorney specifically advised you that should you file suit and seek a TRO he would like notification pursuant to Rule 66(h) of the New Mexico Rules of Civil Procedure of any such hearing so that he and his client could be present and produce evidence in opposition.

On July 26, 1984, after the defendant had rejected an offer of settlement involving a damage figure and the entry of a fairly permanent restraining order, you apparently concluded that negotiations were at an end and filed suit requesting damages and immediate injunctive relief. You and your client appeared before the assigned judge and obtained a TRO against the defendant.

The evidence shows and the hearing committee found that prior to seeking this TRO, you made no attempt whatsoever to notify opposing counsel of the hearing nor did you certify to the Court in writing your efforts to give notice or reasons why notice should not be required in accordance with Rule 66(b) (2). While you maintained during disciplinary proceedings that the requirements of Rule 66(b) are not customarily followed or enforced in the Second Judicial District, your contention was disputed by the testimony of other witnesses and belied by your own testimony regarding your practice in similar matters. You also acknowledged that one reason for your failure to give notice to opposing counsel was because you knew he would not agree with your motion, which is precisely why notice is required. This intentional violation of an established rule of procedure constitutes a violation of Disciplinary Rule 7-106 (C) (7).

In addition to this misconduct, it was also found that at this ex parte hearing you knowingly concealed from or failed to disclose certain pertinent facts to the judge in violation of Disciplinary Rule 7-102 (A) (3). You failed to advise the judge that the defendant was represented by counsel or that notice had been requested by him. The judge testified before the hearing committee that had this fact been made known to her, no TRO would have been granted in an ex parte fashion. You also neglected to advise the judge that the photos you showed her of your client's injuries were in fact over three months old or that the defendant had not attempted to communicate with your client since the incident in question. At a subsequent hearing wherein the TRO was vacated, the judge instructed you not to engage in such conduct in the future and you agreed to refrain from so doing but limited your agreement to appearances before this particular judge only.

By your deception of the judge and your willful failure to follow established procedural rules, you have also engaged in conduct which reflects adversely upon your fitness to practice law in violation of Disciplinary Rule 1-102 (A) (6).

You have stated that you have been in the practice of law for twenty-three years. While this type of behavior might be understandable (although not excusable) if committed by an inexperienced lawyer, it can hardly be tolerated in an attorney with your background. Furthermore, it was not until your summation to the hearing committee that you even conceded that this conduct might have been improper in any way. In that one purpose of attorney discipline is to protect the public, the sanction must be sufficient to assure that the attorney has been made aware that the conduct is not to be repeated. While we do not suggest that an attorney is not entitled to contest the allegations of disciplinary counsel before a hearing committee, it is certainly appropriate to consider his or her attitude toward the misconduct when imposing sanctions. Had you persisted in this denial of wrongdoing in your argument to the Board, the sanction imposed might well have been more severe.

Rules of procedure promulgated by the Supreme Court are not merely suggestions by the Court of a possible way to handle a given situation. They are mandates to be followed. As an officer of the Court, you are expected to understand and to observe all of these Rules. You are further expected to be straightforward in your representations to others, particularly to judges in court proceedings. If the courts cannot trust their officers to understand and follow procedural rules and to set forth all relevant and unprivileged facts for consideration, then the system we have will be weakened substantially. Your

conduct in this matter was disgraceful and, if ever repeated, would result in a much harsher sanction. We trust, however, that you have learned from this experience and will benefit from this instruction.

This formal reprimand will be filed with the Supreme Court in accordance with Rule 11 (d) of the Rules Governing Discipline and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 11(d), the entire text of this reprimand will be published in the State Bar of New Mexico News and Views.

The costs of this action in the amount of \$921.40 are assessed against you and should be paid to the Disciplinary Board office on or before May 15, 1985. In addition, the costs of preparing the transcript of today's proceedings for filing with the Supreme Court are assessed against you. These are to be paid to the Disciplinary Board office no later than ten (10) days from your receipt of a copy of that bill.

THE DISCIPLINARY BOARD  
By:

s/ John E. Conway, Chairman

# BULLETIN

ADVANCE OPINIONS OF  
THE SUPREME COURT &  
THE COURT OF APPEALS

*From The New Mexico Supreme Court*

JACK GRYNBERG, d/b/a  
JACK GRYNBERG AND ASSOCIATES,  
Plaintiff-Appellee  
and Cross-Appellant.

versus

VICTOR ROBERTS, et al.,  
Defendants-Appellants  
and Cross-Appellees.

No. 15007 (filed April 16, 1985)

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY  
JOHN B. WALKER, District Judge

W. L. MARTIN, JR.  
MARTIN & REHLES  
Carlsbad, New Mexico  
for Appellants

JAMES E. KIRK  
Albuquerque, New Mexico

CHAD DICKERSON  
Artesia, New Mexico  
for Appellee

## OPINION

DAN SOSA, JR., Senior Justice.

Plaintiff appeals from a failure of the trial court to award prejudgment interest in a suit for breach of contract. Plaintiff Grynberg sued Roberts and several other defendants for breach of an agreement to pay proportionate shares of the cost to drill and operate certain oil wells. The trial court granted judgment to Grynberg on the principal indebtedness, but failed to award the request-

ed "reasonable interest" on the principal awarded. We reverse on that issue.

The sole question on appeal is whether prejudgment legal interest should attend the amount awarded Grynberg.

The trial court found that since 1975 the defendants had not paid their share of the drilling and operational costs under their agreements. In evidence were agreement forms entered into by the parties, titled "Authori-